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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,678	01/12/2006	Mark Richard Jones	1263-001	8316

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DOBRUSIN & THIENNISCH PC
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SUITE 210
PONTIAC, MI 48342

EXAMINER

HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

MAIL DATE	DELIVERY MODE
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06/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,678

Applicant(s)

JONES, MARK RICHARD

Examiner

Gary Hartmann

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-36, 40, 41 and 53-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-36, 40, 41 and 53-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33-36, 40, 41 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver (U.S. Patent 3,625,489) in view of Goodhart et al. (U.S. Patent 6,659,684) and either Wiley (U.S. Patent 6,998,010) or Damp et al. (U.S. Patent 4,601,605).

Weaver discloses an asphalt surface repair apparatus including a vehicle (12), a heater gas source (220), a pivotally mounted heater (30) and an asphalt source (274). Weaver does not teach the liquid source or dispenser; however, it is common in road repair to use a liquid source dispenser in order to rejuvenate an asphalt surface as desired. For example, Goodhart teaches such a system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a liquid source and dispenser in order to optimally repair an asphaltic surface, as taught by Goodhart. Note that because the heater of Weaver is positioned on the rear of the vehicle, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have positioned the liquid source ahead of the heater. Weaver also doesn't teach the sensor. Wiley and Damp each teach adjusting the height based upon sensed temperatures. It would have been obvious to one of ordinary skill in the art at the time

the invention was made to have used a distance sensor with Weaver in order to control heating by the proximity of the heater to the surface, as taught by Wiley or Damp.

Regarding the heater blanket, Goodhart teaches using a heater blanket. Applicant's material is prior art and the thermal properties are well known to those skilled in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a blanket of the material as claimed in order to properly heat the pavement using a durable construction.

Regarding claims 40 and 53, a controller is inherent. Position sensors are also well known. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a position sensor in conjunction with the pivotable heater in order to, for example, prevent the heater from being turned on in the stowed position; thereby increasing safety.

Regarding claims 54 and 55, little patentable weight may be given to these limitations since these are process of using the apparatus limitations. For example, even heating a depth of zero is within the scope of both of these claims.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver/Goodhart et al./Wiley or Weaver/Goodhart et al./Damp et al. as applied above, and further in view of de Bruyne et al. (U.S. Patent 5,088,919).

De Bruyne teaches the claimed material in conjunction with infrared heaters. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made

to have made the blanket of Goodhart et al. from the claimed material in order to obtain a blanket having a durable construction.

Response to Arguments

Applicant's arguments filed 01 April have been considered but are moot in view of the new grounds of rejection. Regarding the statement beginning with "wherein" and continuing through the last four lines of claim 33, note that there is no temperature or range recited with respect to the temperature; therefore, any temperature is within the scope of the claim. In other words, since the heater of Weaver inherently must have some temperature, claim recitations are met.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 571-272-6989. The examiner can normally be reached on Tuesday through Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary Hartmann/
Primary Examiner, Art Unit 3671